



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

Tom Oliva, President and CEO
Moore Response Marketing Services
1200 Lakeside Drive
Bannockburn, IL 60015

DEC 10 2003

RE: MUR 5396
Moore Response Marketing Services

Dear Mr. Oliva:

On November 18, 2003, the Federal Election Commission found that there is reason to believe Moore Response Marketing Services violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Tom Oliva, President and CEO
Moore Response Marketing Services
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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

1
2 **FEDERAL ELECTION COMMISSION**
3 **999 E Street, N.W.**
4 **Washington, D.C. 20463**
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6 **FACTUAL AND LEGAL ANALYSIS**
7

8 **RESPONDENTS:** Moore Response Marketing Services

MUR: 5396

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10 **I. INTRODUCTION**

11 This matter was generated based on information ascertained by the Federal Election
12 Commission ("the Commission") in the normal course of carrying out its supervisory
13 responsibilities. *See* 2 U.S.C. § 437g(a)(2).

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 There is reason to believe that Moore Response Marketing Services ("Moore"), a direct
16 mail vendor, made prohibited contributions to Bauer for President 2000, Inc. (the "Committee")
17 in the form of extensions of credit. Moore provided direct mail services to the Committee for
18 which it was not fully paid in a timely manner. Thus, the Commission finds reason to believe
19 that Moore made prohibited contributions to the Committee.

20 The extension of credit by any person is a contribution unless it is extended in the
21 ordinary course of business and the terms are substantially similar to extensions of credit to
22 nonpolitical debtors of similar risk and size of obligation. 11 C.F.R. § 100.7(a)(4). If a creditor
23 fails to make a commercially reasonable attempt to collect the debt, a contribution will result.
24 *Id.*; *see* 11 C.F.R. § 116.3 and 116.4. Although corporate contributions are prohibited, 2 U.S.C.
25 § 441b(a) and (b), an extension of credit by an incorporated commercial vendor to a candidate or
26 political committee will not be considered a contribution provided the terms are substantially
27 similar to its extensions of credit to nonpolitical debtors that are of similar risk and size of
28 obligation, and the credit is extended in the ordinary course of the commercial vendor's business.
29 11 C.F.R. § 116.3(a) and (b), *see* § 116.1. To determine if credit was extended in the ordinary

1 course of the commercial vendor's business, the Commission will consider: 1) whether the
2 commercial vendor followed its established procedures and its past practice in approving the
3 extension of credit; 2) whether the commercial vendor received prompt payment in full if it
4 previously extended credit to the same candidate or political committee; and 3) whether the
5 extension of credit conformed to the usual and normal practice in the commercial vendor's trade
6 or industry. 11 C.F.R. § 116.3(c).

7 The Committee did not pay timely portions of two invoices totaling \$124,089 owed to
8 Moore, a corporate vendor of direct mail services. The terms noted on both invoices were
9 "payable on receipt." The first invoice, for \$408,001, was dated November 11, 1999. The
10 Committee made four timely payments totaling \$293,956, leaving a balance of \$114,045. The
11 Committee subsequently paid \$30,000 (May 23, 2000) and \$20,000 (July 3, 2000) on this
12 invoice; however, these payments were made between 194 and 235 days subsequent to the date
13 of the invoice. As of the 2003 July Quarterly Report, the Committee disclosed that it still owes
14 Moore \$37,045. The second invoice from Moore was dated August 4, 1999 in the amount of
15 \$11,713. The Committee's initial payment of \$1,669 was timely. However, the Committee did
16 not pay the remaining balance of \$10,044 until February 14, 2000, 194 days after the date of the
17 invoice.

18 On September 7, 2000, Moore submitted an invoice and payment history to the
19 Committee that reflected a \$64,045 outstanding balance. Other than this statement, however, it
20 does not appear that the vendor sent subsequent invoices or made additional attempts to collect
21 the amounts due.

22 There is reason to believe that Moore's extension of credit was a prohibited corporate
23 contribution to the Committee. 2 U.S.C. § 441b. There is no available evidence that Moore's

1 extension of credit to the Committee was in the ordinary course of business, on terms that were
2 substantially similar to its extension of credit to nonpolitical debtors of similar risk and size of
3 obligation. 11 C.F.R. §§ 100.7(a)(4), 116.3(b). There is no available evidence that Moore
4 followed its established procedures and past practice or that the extension of credit conformed to
5 the usual and normal practice in the direct mail industry. 11 C.F.R. §§ 100.7(a)(4), 116.3(b).
6 Other than one follow-up invoice, there is no evidence of collection efforts by Moore or
7 information about its collection policies and practices, advance payment policies, or billing
8 cycles for nonpolitical debtors. In addition, the Committee has still not paid Moore in full.
9 Thus, there is reason to believe that Moore's extension of credit to the Committee was not in the
10 ordinary course of business.

11 Therefore, there is reason to believe that Moore Response Marketing Services made a
12 prohibited contribution to the Committee in the amount of \$124,089 for the period the invoices
13 remained outstanding in violation of 2 U.S.C. § 441b(a).